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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 TOBY MARTIN SLATER,)
10 Petitioner,) No C 06-0325 VRW (PR)
11 vs.) ORDER OF DISMISSAL
12 DERRAL G ADAMS, Warden,)
13 Respondent(s).)
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15 Petitioner, a state prisoner incarcerated at the California Substance Abuse
16 Training Facility and State Prison in Corcoran, California, has filed a petition for a writ
17 of habeas corpus under 28 USC § 2254 challenging a conviction from the Superior
18 Court of the State of California in and for the County of Monterey. The California
19 Court of Appeal affirmed the judgment of the trial court on September 10, 2004 (and
20 modified its opinion and denied rehearing on October 7, 2004) and the Supreme Court
21 of California denied review on December 15, 2004. However, petitioner recently filed a
22 petition for a writ of habeas corpus in state superior court raising new claims for relief.

23 Petitioner must exhaust state judicial remedies before turning to the federal courts
24 for habeas review. 28 USC § 2254(b),(c). This requirement is not satisfied if there is a
25 pending post-conviction proceeding in state court. See Sherwood v Tomkins, 716 F2d
26 632, 634 (9th Cir 1983). A would-be federal habeas petitioner must await the outcome
27 of all pending state post-conviction proceedings before his state remedies are exhausted.
28 See *id.* Even if the federal constitutional question raised by the petitioner cannot be

1 resolved in the pending state proceeding, that proceeding may result in the reversal of
2 the petitioner's conviction on some other ground, thereby mooted the federal question.
3 See id (citations omitted). Petitioner must wait until his pending state petition is
4 resolved in the state courts before seeking habeas relief in federal court.

5 Accordingly, the instant petition is DISMISSED without prejudice to refiling a
6 new petition after all pending state post-conviction proceedings are completed.

7 The clerk shall close the file and terminate all pending motions as moot.

8 SO ORDERED.

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10 VAUGHN R WALKER
11 United States District Chief Judge